



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

April 8, 1939

GERALD C. MANN  
ATTORNEY GENERAL

Mr. Leland M. Johnson, Chairman  
Subcommittee on State Affairs  
House of Representatives  
Austin, Texas

Dear Sir:

Opinion No. 9-579  
Re: Constitutionality of House  
Bill No. 960, relating to  
use of Texas Old Age Assist-  
ance Fund for payment of  
burial expenses.

We acknowledge receipt of your letter of April 4, 1939,  
in which you request our opinion as to the constitutionality of  
House Bill No. 960, which provides for payments to certain per-  
sons to be taken from the Old Age Assistance Fund. This bill  
reads as follows:

\* A BILL

TO BE ENTITLED

AN ACT providing for an Old Age Burial Fund;  
providing for the manner and amount  
of payment, and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Whenever any person who has been placed up-  
on the rolls of the Texas Old Age Assistance Commission,  
and is regularly drawing payments thereunder, under the  
provisions of the law relating thereto, shall die, and  
proof thereof shall be made to the Comptroller within  
forty (40) days from date of such death by the affidavit  
of the Doctor who attended the deceased during the last  
illness, or the undertaker who conducted the funeral, or  
made arrangements therefor, the Comptroller shall issue  
Treasury Warrants for an amount equal to five times the  
last warrant issued to said deceased, but in no event to  
exceed the sum of Seventy-five (\$75) Dollars. Said  
Mortuary Warrant shall be payable out of the Texas Old Age

"Assistance Fund, in favor of the heirs or legal representatives of the deceased, or in favor of the person or persons owning the burial account (proof of the existence and justice of such account to be made to said Comptroller under oath in such form as he may require); said warrant to be used for the purpose of paying the burial expenses of the deceased.

SECTION 2. The fact that a great number of the persons receiving benefit under the Texas Old Age Assistance Law are now rapidly passing away, and a large portion of them do not have estates with which to pay burial expenses, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the same is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted."

After careful consideration of House Bill No. 960 and of the relevant constitutional provisions, it is our opinion and you are advised that said bill is unconstitutional.

Article 3, section 31, of the Constitution of the State of Texas reads in part as follows:

"The Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever....."

Article 3, section 44, of the Constitution of the State of Texas provides that the Legislature shall not".....grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law....."

Certain exceptions to the prohibitions against grants or donations of public moneys are to be found in the State Constitution, but none of these exceptions are relevant to this opinion except Article 3, section 51b, adopted August 24, 1935, which reads as follows:

"The Legislature shall have the power by general laws to provide, under such limitations and restrictions and

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"regulations as may be deemed by the Legislature expedient, for old-age assistance and for the payment of same not to exceed Fifteen Dollars (\$15) per month each to actual bona fide citizens of Texas who are over the age of sixty-five (65) years; provided that no habitual criminal, and no habitual drunkard while such habitual drunkard, and no inmate of any State-supported institution, while such inmate, shall be eligible for such old-age assistance; provided further that the requirements for length of time of actual residence in Texas shall never be less than five (5) years during the nine (9) years immediately preceding the application for old-age assistance and continuously for one (1) year immediately preceding such application.

"The Legislature shall have the authority to accept from the Government of the United States such financial aid for old-age assistance as that Government may offer not inconsistent with the restrictions hereinbefore provided."

It will be noted that Article 3, section 51b, provides only for "old-age assistance" and for the payment of the same to "actual bona fide citizens of Texas who are over the age of sixty-five (65) years" and who meet the other requirements set forth therein. It is contemplated by this constitutional provision that such payments as are therein authorized shall be made to living citizens of Texas to assist them in their old age. We believe that the accomplishment of an essentially different purpose is contemplated by House Bill No. 960, in that said bill provides, not for payments to aged citizens, but to their heirs or legal representatives or the persons who bury them, after their death. The payments provided for by House Bill No. 960 do not, therefore, come within the provisions of Article 3, section 51b, and such payments are prohibited by the Constitutional provisions, hereinbefore quoted, against the donations or grants of public moneys.

We are also of the opinion that House Bill No. 960 is unconstitutional under Article 3, Section 35, of the Constitution of the State of Texas, which reads as follows:

"No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an

"act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed."

The title of House Bill No. 960 does not express the subject of the bill. The title states that the act provides for an Old Age Burial Fund, whereas no such fund is provided for in the body of the bill. There is no notice given in the title to the bill that the bill provides for a diversion of part of the Texas Old Age Assistance Fund for the payment of the burial expenses of persons who had been on the Old Age Assistance rolls. Since this provision embodies the main purpose of the bill, and no reasonable notice thereof is given in the title, the bill is clearly in violation of Article 3, Section 35, of the Constitution.

De Sylvia v. State, 88 Tex. Cr. 634, 229 S.W. 542.

Arnold v. Leonard, 114 Tex. 535, 273 S. W. 799.

House Bill No. 960 is also in violation of Article VIII, Section 7, of the State Constitution, which reads as follows:

"The Legislature shall not have power to borrow, or in any manner divert from its purpose, any special fund that may, or ought to, come into the Treasury; and shall make it penal for any person or persons to borrow, withhold or in any manner to divert from its purpose any special fund, or any part thereof."

Chapter 37, Acts 45th Legislature, Regular Session, 1937, page 60 (Vernon's Annotated Civil Statutes, Article 8243-13 (b) ) provides as follows:

"(b) For the purpose of paying the aid and assistance to needy citizens of Texas herein provided for, and for the purpose of defraying the expenses of administering this Act, there is hereby created and established a special fund in the Treasury of the State of Texas, to be kept by the State Treasury separate and apart from all other funds, and to be known as the 'Texas Old Age Assistance Fund', and for the purposes above set out there is hereby appropriated out of such funds all amounts received and credited to said fund, or so much thereof as may be necessary, for the fiscal year ending August 31, 1937. Provided that if the fund is insufficient to pay all grants in full, the same shall be paid pro rata based on the amount granted to each recipient."

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Since the Texas Old Age Assistance Fund is created and established by statute as a special fund to provide financial aid to aged citizens, its diversion to the different purpose of the payment of burial costs would be a violation of Article VIII, Section 7, quoted above.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *James P. Hart*  
(Signed) James P. Hart  
Assistant

JPH:FL

APPROVED:

*Gerald C. Mamm*  
(Signed) Gerald C. Mamm  
ATTORNEY GENERAL OF TEXAS